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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 859.

C. L. ASHTON ET ALS., PETITIONERS,

VS.

CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1, RESPONDENT.

BRIEF OF AMICUS CURIAE.

HARVEY RONEY,
Amicus Curiae.

GEORGE D. BEARDSLEY,
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BRIEF OF AMICUS CURIAE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The *amicus curiae* herein respectfully prays and requests permission of this Honorable Court to file his brief and argument in this cause and trusts that the same may be of some assistance to this Honorable Court in the determination and adjudication of said cause.

The *amicus curiae* accepts and adopts the statement of facts, the statement as to jurisdiction and the statement of prior decisions of the lower courts in this cause as set forth in the brief of respondent filed in this cause.

The principal question presented and on which *amicus curiae* desires to file brief is on the constitutionality of the act approved May 24, 1934, amending the Bankruptcy Act which was approved July 1, 1898, as to whether or not said amendment is or is not constitutional and does or does not violate the Tenth Amendment of the Constitution of the United States.

QUESTION PRESENTED.

The Bankruptcy Act approved July 1, 1898, as amended by Sections 78, 79 and 80, approved May 24, 1934, is constitutional and does not violate Tenth Amendment of the Constitution of the United States.

National Bankruptcy Act of July 1, 1898, Chapter I, Sec. 1.

Article I of the Constitution of the United States, Section 8.

Hamilton v. *Kentucky Distilleries and Warehouse Co.*, 251 L. S. 146.

County of Lincoln v. *Luning*, 133 L. S. 529.

Loeb v. *Trustees of Columbia Township*, 179 U. S. 472.

Continental Illinois Bank & Trust Co. v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648.

ARGUMENT.

As counsel for the Birmingham Drainage District of Clay County, Missouri, we feel that all such districts have an interest in the final determination and adjudication of this cause. Said district has had a loan approved by the Reconstruction Finance Corporation and is now in a position to close the same.

Without going into the full discussion of all the points involved in this case before this Honorable Court, we feel that the question of whether or not the Amendment to the Bankruptcy Act approved May 23, 1934, violates the Tenth Amendment to the Federal Constitution, is a question of vital importance to all drainage districts. It would seem that the answer to this problem is not one that requires any great amount of research or the citing of any large number of authorities, but is a proposition that is comparatively simple and fundamental and that it may be determined by investigation into the few fundamental points which are involved.

Article I of the Constitution of the United States, Section 8, provides that "the Congress shall have power * * * to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States."

Clearly there can be no question but what the amendment herein involved deals with the question of bankruptcies. It is similar to Section 77 amending the

Bankruptcy Act in its scope and its purposes, save and except that it deals with the subdivisions of a state.

Said Section 77 has been held constitutional by this Honorable Court in the case of *Continental Illinois Bank and Trust Co.* v. *Chicago, Rock Island and Pacific Ry. Co.*, 294 U. S. 648.

Let us however look for just one moment at the wording of the Tenth Amendment. It says:

"The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people."

It will be noted that the subject of bankruptcies is a subject that was delegated to the United States in the first article of our Constitution. Therefore, we cannot say that the amendment in question is not included in a power delegated to the United States by the Constitution.

The chief objection of the petitioner to the amendment in this cause seems to be that it deprives the state of some right which is left to the state by virtue of the Tenth Amendment, *supra.*

Section 1 of Chapter I of the National Bankruptcy Act of 1898 is the section entitled "Section 1—Meaning of Words and Phrases." In other words it is a section which deals with definitions and the sixth definition given therein is as follows: "Corporations shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws, making the

capital subscribed alone responsible for the debts of the association."

Clearly it would have been within the power and authority of the Congress in passing this Bankruptcy Act to have added that the word "corporation" should include "any municipality or other political subdivision of any state, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town or township, incorporated tax or special assessment district and any school, drainage, irrigation, reclamation, levee, sewer or paving sanitary port improvement or other districts."

Had it done so, it would have been within the clear authority and power of the Congress and we cannot believe that it would have been challenged in this proceeding, and yet the political subdivisions of the state above named are exactly the ones which are included in Section 80 of the Amendment to the Bankruptcy Act. They could have been included by definition in the original Bankruptcy Act itself. The fact that they are brought in by amendment later on does not affect the constitutionality of either the Bankruptcy Act or of said Section 80.

This Honorable Court in the case of *Hamilton* v. *Kentucky Distilleries and Warehouse Co.*, 251 U. S. 146, in passing upon the question of war-time prohibition at page 156 of the opinion by Mr. Justice Brandeis said:

> "But it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be

attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose."

Thus it will be seen that even though the states might themselves have power to legislate relative to their political subdivisions, that this itself would not deprive the United States of the power to legislate in a matter in which the United States was given authority to legislate by our constitution.

Section 80 (k) provides:

"Nothing contained in this chapter shall be construed to limit or impair the power of any state to control, by legislation or otherwise, any political subdivision thereof in the exercise of its political or governmental powers, including expenditures therefor, and including the power to require the approval by any governmental agency of the state of the filing of any petition hereunder and of any plan of readjustment, and whenever there shall exist or shall hereafter be created under the law of any state any agency of such state authorized to exercise supervision or control over the fiscal affairs of all or any political subdivision thereof, and whenever such agency has assumed such supervision or control over any political subdivision, then no petition of such political subdivision may be received hereunder unless accompanied by the written approval of such agency, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of such agency of such plans."

Thus it will be seen that Congress intended to make this act permissive and to permit the states not only to have concurrent jurisdiction, but to permit the states

to prevent a creditor described in Section 80 from coming under the benefits of its provisions without the consent of the proper state authority.

The respective states as such have no direct pecuniary interest in any proceeding which might be filed under Section 80 and therefore it would seem that the foregoing powers granted to the states by Subdivision k above is most generous in leaving the authority with the state to do what it might deem proper in any of its subdivisions with reference to Section 80 of the Amendment to the Bankruptcy Act.

In this regard it is interesting to note what this Honorable Court said in the case of the *County of Lincoln* v. *Nicholas Luning*, 133 U. S. 529. We quote from the opinion of Mr. Justice Brewer in that case on page 530 thereof, as follows:

> "The Eleventh Amendment limits the jurisdiction only as to suits against a state. It was said by Chief Justice Marshall, in *Osborn* v. *The Bank*, 22 U. S. 9 Wheat. 738, 857 (6:204, 232), that the 'Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against states, is of necessity limited to those suits in which the state is a party on the record.'
>
> "While that statement was held by this court in the case of *Re Ayers*, 123 U. S. 443 (31:216), to be too narrow, yet by that decision the jurisdiction was limited only in respect to those cases in which the state is a real, if not a nominal defendant; and while the county is territorially a part of the state, yet politically it is also a corporation created by and with such powers as are given to it by the state. In this respect it is a part of the state only in that remote sense in which any city, town or other munic-

ipal corporation may be said to be a part of the state. *Metropolitan R. Co.* v. *Dist. Col.*, 132 U. S. 1 (33:231)."

We also wish in this connection to quote from the case of *Louis Loeb* v. *Trustees of Columbia Township*, 179 U. S. 472. In the opinion of this Honorable Court delivered by Mr. Justice Harlan, at pages 485, 486, this court said:

> "When the Act of 1888 was passed it was the established law that a municipal corporation created under the laws of a state, with power to sue and be sued and to incur obligations, was to be deemed a citizen of that state for purposes of suit by or against it in the courts of the United States. In *Cowles* v. *Mercer County*, 7 Wall. 118, 122, *sub. nom. Mercer County Supvrs.* v. *Cowles*, 19 L. Ed. 86, 88, this court said: It is enough for this case that we find the board of supervisors (of the county) to be a corporation authorized to contract for the county. The power to contract with citizens of other states implies liability to suit by citizens of other states, and no statute limitation of suability can defeat a jurisdiction *given by the Constitution.' Lincoln County* v. *Luning*, 133 U. S. 529, 531, 33 L. Ed. 766, 767, 10 Sup. Ct. Rep. 363; *McCoy* v. *Washington County*, 3 Wall. Jr. 381, 384, Fed. Cas. No. 8731; Dillon, Removal of Causes, Sec. 105. We perceive nothing in that act indicating any purpose of Congress to exclude from the jurisdiction of the Circuit Courts of the United States suits by or against municipal corporations having authority by the laws creating them to sue or to incur liabilities, in their corporate name. It must, therefore, be taken that the words 'any corporation,' in the Act of 1888, include municipal as well as private corporations."

Thus it will be seen from the last two foregoing cases that the respective states are not being deprived of any of their rights or interests as states and that municipal corporations and subdivisions of the state created by state statutes are clearly within that class over which jurisdiction is vested in the federal government when it sees fit to exercise such jurisdiction.

Note again, the last sentence in the last above opinion:

> "It must therefore be taken that the words 'any corporation' in the Act of 1888, include municipal as well as private corporations."

It is therefore the respectful suggestion to the Honorable Court that had the original Bankruptcy Act merely said in its description of the word "corporation" that the term "corporation" should mean "any corporation," that municipal corporations, drainage and levee districts and the like, which are in fact incorporated by act of the legislature or by virtue of authority of acts of the legislatures of the respective states would have been within the original Bankruptcy Act and the inclusion could not then have been questioned.

We respectfully submit and suggest that it cannot now be questioned.

What the amendment herein to be decided has done is merely to enlarge the definition of the word "corporation" as provided in the original Bankruptcy Act and to grant the powers, privileges and procedure to corporations thus included, which are granted to corporations enumerated in Section 77 of the Amendment

to the Bankruptcy Act which has been approved by this Honorable Court.

We can see no reason why it is not as important to the people of the United States generally and to the Government of the United States generally to have corporations of a public nature included in the provisions of the Bankruptcy Act, as it is to have private individuals and private corporations included in said provisions. As we see the situation the only reason that they were not incorporated in the Bankruptcy Act long since is due to the fact that they represent a type of corporation which is comparatively recent either in its formation or which has but recently shown by facts and circumstances, that it should be entitled to the provisions of the Bankruptcy Act. Up to recent times, the question of a county or city going bankrupt was a proposition almost unheard of, and the other classes of public corporations are so comparatively new in their organization and in their financial developments that it has just begun to be apparent that they will have their troubles the same as individuals and private corporations, and we respectfully suggest that the same spirit of helpfulness in general welfare which caused the matter of bankruptcies to be mentioned so early in our Constitution, and which caused the passage of our Bankruptcy Act to enable individuals and private corporations to throw their unbearable burdens aside and forge ahead anew, was the spirit which prompted the enactment of the amendments to the bankruptcy involved in this cause. Unquestionably these amendments pro-

vide the most satisfactory method of solution for the difficult situation in which these public corporations find themselves that has yet been devised. The amendments constitute a benefit to our people. They constitute such a benefit that our Congress has seen fit to recognize the necessity for giving the opportunity for such benefits. They have not deprived the states of our Union of any powers whatever; they have not violated the Tenth Amendment to our Constitution. They have merely enlarged the scope by definition and procedure of the inherent and fundamental power to regulate bankruptcies as given to our Congress by our Constitution.

Conclusion.

We respectfully submit to this Honorable Court that the contention of petitioners herein in this regard is without merit and that these public corporations should be allowed to proceed under and by virtue of the provisions granted to them under these amendments to the Bankruptcy Act.

.....,

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MARTIN E. LAWSON,
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Of Counsel.

Certificate of Counsel.

Harvey Roney of Kansas City, Missouri, hereby certifies that he is a regularly licensed attorney, admitted to practice in the Supreme Court of the United States, and that the foregoing brief as *amicus curiae* is submitted in good faith and for the purpose of aiding the court in this controversy.

.....,

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